IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

LA.App..No. 1339 of 2003(D)& C.O.63/2004

LAR.454/1998 of ADDL.SUB COURT, N.PARAVUR
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APPELLANT: ADDL.2ND RESPONDENT:

KOCHI INTERNATIONAL AIRPORT SOCIETY,
REP. BY ITS MANAGING DIRECTOR, ANGAMALY.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.)

RESPONDENTS: CLAIMANTS/1ST RESPONDENT:
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1. CHAKKAPPAN, S/O. VARGHESE,
MARANGADAM PUTHUSSERY, AVANAMCODE.

2. STATE OF KERALA,
REP. BY DISTRICT COLLECTOR, ERNAKULAM,
ERNAKULAM DISTRICT.

BY ADV. SRI.VINOD RAVINDRANATH
GOVERNMENT PLEADER SMT.K.R.DEEPA.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 15/10/2007, ALONG WITH CO NO. 63 OF 2004 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. NO. 1339 OF 2003 & Cross Objection 63/04

Dated 15th October, 2007.

J U D G M E N T

Kurian Joseph, J.

This appeal pertains to the acquisition for Kochi International Airport, Nedumbassery. It is seen that the reference court has fixed the land value at 96% over and above the land value fixed by the Land Acquisition Officer. In LAA 412/01 and several connected cases, this court has held that proper fixation would be 45% over and above the land value fixed by the Land Acquisition Officer. Therefore, we partly allow this appeal and hold that the claimant will be entitled to enhancement only at the rate of 45% over and above the value fixed by the Land Acquisition Officer. The claimant shall also be entitled to all eligible statutory benefits including interest on solatium. The judgment and decree will stand modified to the above extent.

2. In the cross objection, the dispute is with regard to the value of structures. The Land Acquisition Officer fixed the land value at Rs.5,68,800/- for the residential building. The reference court granted a further enhancement to the tune of Rs.1,70,640/-. The claim was for Rs.11,26,304.57. Reliance is

placed on the report of the Advocate Commissioner in O.S.603/97 on the file of the Munsiff Court, Aluva. It is seen that the assessment is made with the assistance of a qualified Engineer, who has been examined as AW2. However, observing that there is no meticulous reference to the value of structures, the reference court refused to follow the report of the Advocate Commissioner. In LAA 295/02 and in several other cases, this court has held that a report duly prepared by an Advocate Commissioner and which forms part of the record cannot be refused to be followed, in the absence of any evidence to the contra. However, this court held that since the report of the Advocate Commissioner is after two years of the notification, proportionate reduction should be given towards depreciation. For two years, in LAA 295/02, this court held that 15% reduction should be given. In this case, as rightly pointed out by the counsel appearing for the requisitioning authority, the report is prepared after more than three years of the notification. Therefore, the counsel is right in pointing out that there should be a depreciation at least to the tune of 30%. It is seen that the claim is limited to Rs.1,13,700/-. Therefore, we hold that the

cross objector shall be entitled to an additional compensation of Rs.1,13,700/- towards value of structures. The appeal and cross objection are allowed as above.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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KURIAN JOSEPH &

HARUN-UL-RASHID, JJ

L.A.A. NO. 1339 OF 2003

J U D G M E N T

Dated 15th October, 2007.